



Petition submitted to

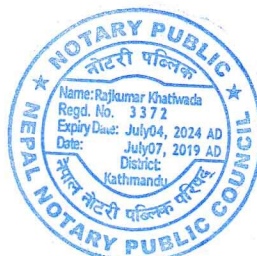
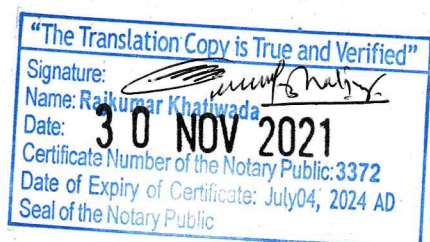
Supreme Court

Subject: An order of certiorari, mandamus and other appropriate orders to be issued for effective implementation of fundamental rights, including the right to gender identity and the rights related to education pursuant to Article 45 133 (2) (3) of the Constitution of Nepal

Rukshana Kapali age 122, female, resident of ward number 16 Patko Tole, Lalitpur, Metropolitan City, Lalitpur District.....1 Petitioner

Vs.

The Government of Nepal, Office of the Prime Minister and Council of Ministers, Singhadurbar, Kathmandu1
Tribhuvan University Office of the Controller of Examinations, Balkhu, Kathmandu.....1
Office of the Vice Chancellor, Tribhuvan University, Kirtipur.....1
National Examination Board, Thimi, Bhaktapur.....1
Ministry of Home Affairs, Singhadurbar, Kathmandu.....1
Ministry of Education, Science and Technology, Singhadurbar, Kathmandu.....1
Ministry of Law, Justice and Parliamentary Affairs, Singhadurbar, Kathmandu.....1
Department of National Id and Civil Registration, Singhadurbar, Kathmandu.....1
District Administration Office, Lalitpur.....1
District Education Development and Coordination Unit, Kanibahal, Lalitpur.....1
Office of Lalitpur Metropolitan City, Lalitpur.....1
Office of ward office 16 of Lalitpur, Dhaugal, Lalitpur.....1
National Human Rights Commission, Hariharbhawan, Lalitpur.....1
Department of Passport, Kantipath, Kathmandu.....1
Election Commission Kantipath, Kathmandu.....1
Eden Garden Secondary Boarding School, Lalitpur, ward no 22, Lalitpur.....1

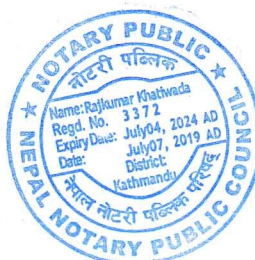
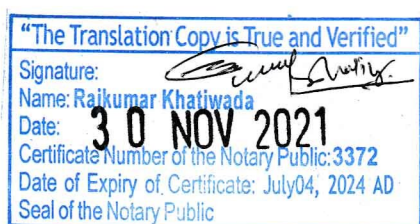




Case: Including Certiorari and Mandamus

I Petitioner hereby submit this petition as set out below pursuant to Article 1, 12, 16, 18, 27, 31,33,35,37,38,39,42 along with Article 133 (2) (3) of the Constitution of Nepal and rule 40 of Supreme Court Regulation, 2074 and enclose a receipt for deposit of the fee for petition.

1. The documents enclosed along this application including my educational certificates and other documents and correspondences by the Opponent bodies mentions the name and gender details as opposed to the actual name and gender identity of the Petitioner. Therefore, as the mentioned documents are public, privacy of the Petitioners personal details will be violated, so it is requested to keep those documents confidential.
2. I, Petitioner am a Nepali citizen. I am a transgender woman. My gender identity is female. Being a Nepali citizen it is my basic human right to be able to enjoy the fundamental rights including education provided by the Constitution and prevailing laws, and to live a dignified life with genuine gender identity and to have equal access to the resources of the state. But, as a transgender woman, I have been deprived of the mentioned rights, As Tribhuvan University has refused to register the Registration Form, I have been deprived of my right for higher education. Failure of amendment of my personal details in accordance to my gender identity in my legal documents including citizenship and educational certificates has seriously hurt my dignity. Also, my personal detail has been disclosed violating my privacy by various government bodies and media. I have to face many insulting remarks from these bodies. Having made repeated verbal and written requests to the Opponent bodies in order to solve such problems and attaining no answers, I am compelled to present this petition before this honorable court in absence of other alternative remedies for addressing the injustices and to enforce the fundamental rights as provided under the constitution.





3. The following is a list of research and published documents by the United Nations, the international community and organizations working in the field of diversity of gender identities, transgender people, including transgender woman like the petitioner:

3.1 **Gender Identity:** It is the expression of a person's inner feelings about gender and words used to identify one's gender. Each person's own internal sense of gender is their own gender identity.

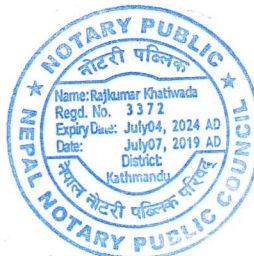
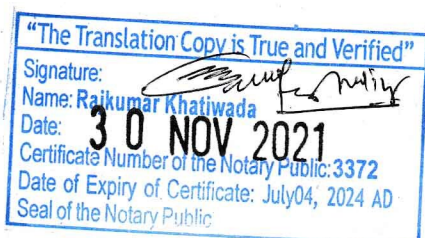
Argentina's Gender Identity Law as approved by the Senate of Argentina on May 8, 2012:

Article 2 – Definition. Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen. It also includes other expressions of gender such as dress, ways of speaking and gestures.

American Psychological Association - Transgender People, Gender Identity and Gender Expression: Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.

SOGIE Equality Bill, Philippines: Sec. 3. Definition of Terms – d. Gender identity refers to the personal sense of identity as characterized among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions.

Transgender Persons (Protection of Rights) Act, 2018 – Pakistan: 2. Definitions – (f) "Gender identity" means a person's innermost and individual sense of self as male, female or a blend of both or neither; that can correspond or not to the sex assigned at birth.





Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights (ISBN 978-1-921449-71-0), Australian Human Rights Commission: Gender identity - The term 'gender identity' refers to a person's deeply held internal and individual sense of gender.

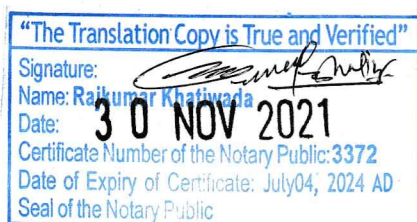
Policy on Preventing Discrimination because of gender identity and expression, Ontario Human Rights Commission: 3 - Gender identity & expression - Gender identity is each person's internal and individual experience of gender. It is a person's sense of being a woman, a man, neither or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex.

Gender Identity, Gender Expression and Sex Characteristics Act, Malta: 2. "gender identity" refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expression of gender, including name, dress, speech and mannerisms;

Organization spread over 155 countries in the world **International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)'s Glossary:** Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex they were assigned at birth.

Scotland's Census 2021 Sex and Gender Identity Topic Report: (Page 5) Gender identity refers to our internal sense of who we are, and how we see ourselves in regards to being a man, a woman, or somewhere between/beyond these identities.

Born Free and Equal – Sexual Orientation, Gender Identity & Sex Characteristics in International Human Rights Law, Second Edition, United Nations Human Rights Office



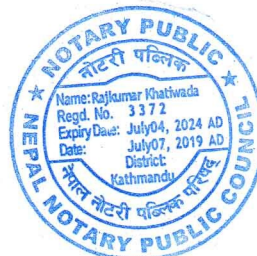
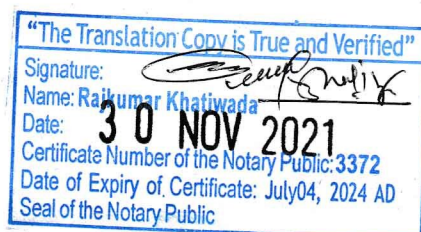


of the High Commissioner: (Page 5) Gender identity reflects a deeply felt and experienced sense of one's own gender.

Frequently asked questions on health and sexual diversity: an introduction to key concepts, World Health Organization (WHO/FWC/GER/16.2): Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.

3.2 As soon as a baby is born, they are referred to as either a boy or a girl on the basis of their genitals or in some cases on the basis of their parent's wish which is called gender assigned at birth. This determination is often made by the parents, guardians and other people looking at the baby genitals indicating that it is a boy if it has a penis and a girl if it has a vagina. In some cases, if the baby has ambiguous or both genitals, the parents determine if it is a boy or a girl as per their wish. A baby cannot express its gender as soon as it is born. Hence, the gender determined by parents and guardians as per the social values looking at the genitals is called gender assigned at birth.

After the birth of a child the gender of the baby is determined and they are raised as boy if penis and girl if vagina. No infants are aware about their gender at infancy. It takes time for the child to realize that the gender they have been brought up in by the society is not the gender of their self-consciousness. Most transgender people begin to express their self-perceived gestures, tendencies or habits at an early age. But there is no public awareness about transgender people or gender diversity in our social milieu. If any person feels slightly different from the set norms of the society in relation to gender, then such person becomes victim of various kinds of stigma, violence and discrimination. Such person may have a conflict in mind as to why such things are happening, and also in context of Nepal there might be a lack of resources and access for people to realize that one is a transgender and such happens and is completely normal and natural. Even if there is access to resources and if one is self-confident about their gender identity, one may not be able to come out openly





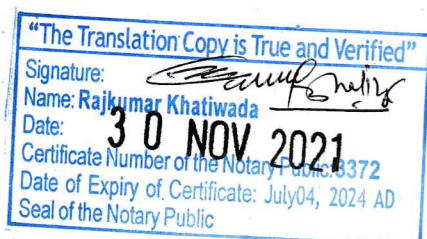
because of the fear of violence and stigma from other people and society. In spite of all these, some transgender people show courage to open up in the society while some people cannot. Even with all these complex social, cultural, economic and other backgrounds, the issue of when a person is confident in one's identity and when one can live with their identity openly is subjective. Therefore, gender identity is a matter that is to be known when a person grows up from their experiences relating to gender.

3.3 Transgender person: means person with a gender identity that is different than that as assigned at birth. Transgender woman (or trans woman) are women who are referred to as a boy at birth on the basis of their genitals. Transgender man (or trans man) are men who are referred to as a girl on the basis of their genitals at birth.

American Psychological Association - Transgender People, Gender Identity and Gender Expression: Transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. "Trans" is sometimes used as shorthand for "transgender."

Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights (ISBN 978-1-921449-71-0), Australian Human Rights Commission: Gender identity - Trans: The term 'trans' is a general term for a person whose gender identity is different to their sex at birth. A trans person may take steps to live permanently in their nominated sex with or without medical treatment.

An organization spread across 155 countries and territories, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)'s Glossary: Trans is an inclusive umbrella term referring to people whose gender identity and/or gender expression differ from the sex/gender they were assigned at birth.





United Nations Free & Equal – Definitions: "Transwomen identify as women but were classified as males when they were born, transmen identify as men but were classified female when they were born."

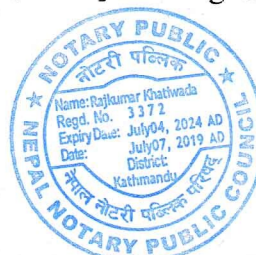
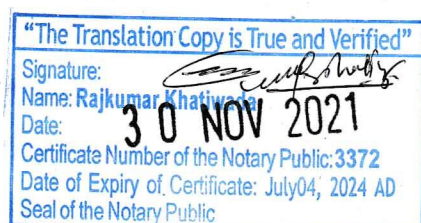
World Health Organization - FAQ on Health and Sexual Diversity An Introduction to Key Concepts: "Trans women identify as women but were assigned as males when they were born. Trans men identify as men but were assigned female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not."

United Nations Economic Commission for Europe - ECE/CES/BUR/2019/FEB/3 - In depth review of measuring gender identity: Transgender seems to refer just to trans men and trans women, which is a better-known concept than non-binary gender and probably much more common. Note that a trans man has a gender (gender identity) of man/male, and similarly a trans woman has a gender of woman/female.

3.4 Sexual Orientation: Sexual and romantic inclination and attraction of individuals is called sexual orientation. Transgender people can be of diverse sexual orientations including heterosexual people who are those that are sexually and romantically attracted to the opposite gender, homosexual people who are sexually and romantically attracted to the same gender, bisexual people who feel sexually and romantically attracted to both, the opposite gender and the same gender as theirs, pansexual people are those who are sexually and romantically attracted to people of all genders, asexual people who do not feel sexual attraction, and so on.

3.5 Concerning Language Sensitivity and Use:

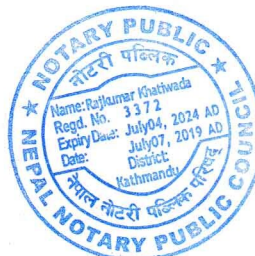
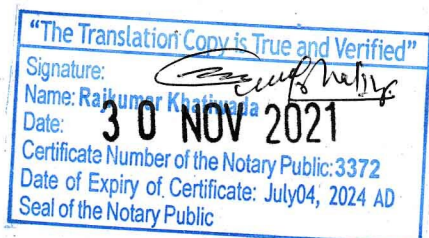
3.5.1 The etymology of the word '*pāralaingik*' in Nepali language is the addition of the prefix '*pāra*' to the main word gender. In Sanskrit '*pāra*' means "across on the other side". The same meaning is used in Nepali language. [Nepali Comprehensive Dictionary, reprinted tenth edition, 2077, p. 782]. In English language, the word





'transgender' is framed by adding the prefix 'trans' to the main word gender. In Latin, the word 'trans' mean "across, on the far side, beyond". In English, 'trans' is used as a prefix to express the same meaning [Oxford Advanced Learner's Dictionary, Eight Edition, Oxford University Press, page 1644].

- 3.5.2 In traditional Nepali language, the term sex and gender were not differentiated. Only the word "*linga*" was used. After the beginning of the feminist movement the practice of using the term "biological (*jaiwik*) *linga*"- sex and "social (*sāmājik*) *linga*"-gender came into practice. Currently the term "*linga*" and "*laingikatā*" is used to denote sex and gender respectively. The reprinted tenth edition of Nepali Comprehensive Dictionary 2077 B.S. page 1143, has adopted the word gender (*laingikatā*) and the practice of using the word gender has been established. Thus, even though the term "*pāralingī*" (trans-sex) is used in some places, the term '*pāralaingik*' (transgender) is appropriate and has been accepted by transgender community and organizations.
- 3.5.3 The word 'transgender' is an adjective. "She is a transgender". "They are transgender". Such use is considered offensive and the word 'transgender' cannot be used alone. It must be used after adding a noun after the use of the word. It is appropriate to say that "She is a transgender person", " They are transgender people".
- 3.5.4 The word 'transgender' is a descriptive word. It describes a person's gender identity based on a comparison of the gender assigned at birth. 'Transgender' is not a word that expresses a separate gender identity in itself. The term 'transgender' is only used to describe a person's gender identity (female or male) as different from the gender assigned at birth.
- 3.5.5 'Transgenderism' is an offensive word. This term was used in the past to describe transgender people as ill. The term dehumanizes transgender people and labels transgender identity as a medical condition. The World Health Organization states that being a transgender person is completely natural, biological and natural. Likewise, it is also wrong to use the term 'transgendered'. Suffix '-ed' is not used in





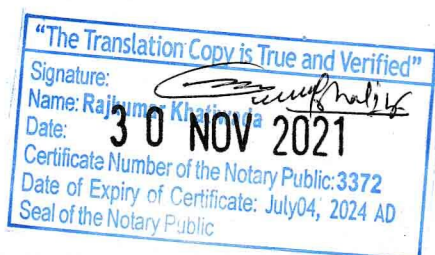
adjectives. It is used only in verbs and 'transgender' is not a verb. Similarly, the English term 'transsexual' is also an outdated. In the 20th century, the term was used to describe transgender people as psychopaths, so it is an offensive word. Instead of considering transgender people as normal or natural the term 'transsexual' was used to describe transgender people as a medical condition, so at present the transgender people do not use that word.

- 3.5.6 People with gender identity other than the one assigned at birth are called 'transgender person', just as people with gender identity as same as assigned at birth are called 'cisgender person'. People who are identified as a boy on the basis of their genitals at birth and whose gender identity is also male are referred to as 'cis man' and those who are identified as a girl on the basis of genitals at birth and those whose gender identity is also female are referred to as 'cis woman'.

4. My Personal Experience Regarding My Gender Identity

I petitioner was born on Nepal Sambat 1119-06-16, 2055-11-20 B.S. (4 March, 1999) at Lalitpur District, previously Lalitpur Sub- Metropolitan City ward no. 18, currently Lalitpur Metropolitan City ward no. 16. When I was born my gender was assigned as male on the basis of my genital. My parents and my family named on the 'Macha Boo Byankegu' ritual as my family tradition. Then after from making my birth certificate to my admission at school the same name and gender details was used. All my documents including my birth certificate and educational certificates were made using the same name and gender details.

From an early age I was looked upon as a 'boy' and raised like that by the society. But from a very young age, I saw and understood myself as a 'girl'. In Nepal, I was not able to understand my gender experience considering the social environment I grew up in, educational curriculum, access to information and other issues. For me, the conflict between the society asking be to be this and I being this, went on. When I went out of the house at an early age I was dressed as a boy and was told to behave in the same way while I entered the four walls of my house I used to





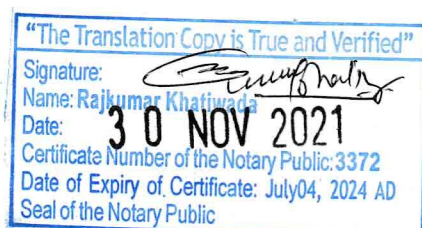
dress up in girl clothes and introduced myself with a girl name. Gradually, as I grew up my relatives around me began to pressure me not to behave in such way. Then my opportunity where I could express my gender was limited to the time when I was alone at home.

On one hand, I used to feel why I am like this different from others while on the other hand I had to be a victim of contempt and disrespect. This continued to affect my emotional well being. While studying in grade 8, a news of comedian Santosh Pant's daughter being a transgender and having undergone genital reassignment surgery went viral and was a subject of talk everywhere from my family to school and I then attained the opportunity to read her interview in the newspaper where I first heard the word 'transgender'.

In absence of other sources, I went to a cyber café and googled the word and got a chance to understand the subject matter. Earlier, I only had heard about the definition of men and women in the society and if someone did not fit under that definition or if someone's gender expression was different then I only heard words of disrespect and insult for such person. After attaining this knowledge, the frustration, conflict and confusion within myself started disappearing. Also, my mental health began to improve as I began to meet, be friends with and socialize with people with same gender identity as mine.

However, due to various kinds of hatred, stigma and comments from other people, I was not able to express my true gender identity openly. I was 13/14 years old then and my fears were my expulsion from home and school if they come to know my true identity, my future in education and acceptance from my family.

Finally, after passing S.L.C. in grade 10, I decided to establish and live according to my true gender identity. I chose the name Rukshana to represent my gender and began to identify myself as a woman.



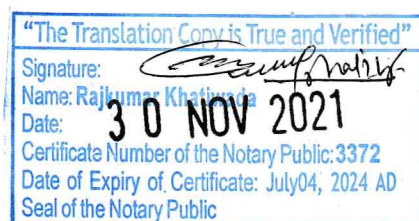


My friends, relatives, family and others who had misunderstood me before, found it difficult to accept my reality and I was subjected to discrimination, stigma and hatred. From that time almost seven years ago to this day, I have had people in my life who have accepted and adopted me in my true identity. And I have succeeded to establish myself in my society, neighborhood and family according to my true identity.

5. However, I am not still able to establish my gender identity legally. The injustices I petitioner have faced because of my gender identity and my attempts and responses received from opponents are as below:

5.1 After passing S.L.C in grade 10, I had reached the age of 16 where one could attain citizenship, so I got into the process of getting my citizenship. I tried to attain the same as per my true identity. I attained my citizenship on 26 June, 2015 (2072-03-11 B.S.) but marking the shortcomings in the law and the legal system the authorities refused to issue my real gender identity in the citizenship mentioning my gender as female. The authorities issued my citizenship mentioning "Others" as my gender without my assent.

5.2 Thenceforth, for my +2 admission, I applied for and attained a letter from the ward office, dispatch no. 63/072/073 on 9 September, 2015 (2072-05-23 B.S.) stating that the name given to be at birth and my own name 'Rukshana' belongs to the same person. With that recommendation I could fill out the Higher Secondary Education Board (HSEB) forms and could study for +2 in two years without any pressure. In that way my +2's education certificates came to be in my name. Also, the records of my class 11 and 12 mentions 'female' as my gender. [Certified by Examination Board dispatch number 747, 7 February, 2021 (2077-10-25 B.S.)] As the letter stating that person with two names are the same people was handwritten, the same recommendation letter which was computer typed having dispatch number 467 was taken on 2 December, 2018 (2075-08-16 B.S.). But actually I did not want the letter which stated that people with two different names are the same person. I did not and do not want to be recognized that way. I only want to be recognized by the name 'Rukshana'





with rightly represents my gender identity. As my documents were not amended according to my gender identity, condition where I had to take such recommendation arose.

5.3 After that, I enrolled at Tri-chandra Multiple Campus under Tribhuvan University for my higher education by selecting Bachelor's in Sociology and Linguistics as the main subjects on 11 December, 2017 (2074-08-25 B.S.). My roll number is 129/074. After completing the first year of study and taking the annual examination I was also admitted to second year of study. I also spent around rupees fourteen thousand one hundred and sixty (Rs. 14,160) including my admission, monthly fees and examination fee for both levels. After some time, the campus informed me to fill out the Tribhuvan University Registration Form. I filled out the form attaching the required educational certificates and submitted the same to the administration of the campus on 9 March, 2018 (2074-11-25 B.S.). The said form is registered under the campus registration number 129/074. But about 4 months later, on 10 July, 2018 (2075-03-26 B.S.), the campus administration informed me that my name and gender details did not match in my class 10 and 12 educational certificates and told me that they could not send such form to Office of the Controller of Examination, of Tribhuvan University. I explained to the campus administration about me being a trans woman and the reason for the differences in my name, gender, citizenship and my educational certificates. I also requested them to send my form to the Office of the Controller of Examination, along with the orders issued by the honorable Supreme Court on the issues of gender identity in this regard. But the campus administration did not consider my request. Instead, they handed me a letter along with the form and asked me to go to the Office of the Controller of Examination, and explain the reasons on my own. *"Student of humanities group of academic year 2074/75 studying at undergraduate level at this campus, Ms. Rukshana Kapali's T.U. registration form, one copy is sent along, request you to take the required fee and send the T.U. registration number."*

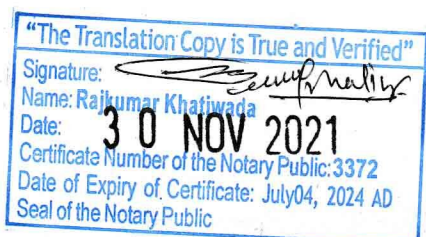
5.4 The day I received this letter, I went to the Office of the Controller of Examination, at Balkhu. I met the Controller of Examinations and requested him to approve the registration





form by explaining all the reasons regarding it. The Controller examined my documents including the registration form, citizenship and my educational certificates and told me that there is no law stating that person with different name in the educational certificate can fill out the registration form. On 13 March, 2018 (2074-11-29 B.S.), I again went to the Office of the Controller of Examination and submitted a written request to approve the registration form. However, the employees of the Office told me that they will put out my application in the meeting of academic group and inform me about the decision after few days. Hoping for a positive decision on the registration form, I continued my studies and took my annual exam and even enrolled in the second year of graduation. I went to the examination control office about 5-6 times to understand about the matter of the registration form. The officials informed me that no decision was made on the matter yet. They told me that the decision would be made soon and that I would have to come to their office to check on the decision. As, no decision was made for a very long time, I sent a letter in relation to the registration form addressing the Office of the Controller of Examination, via post on Nepal Sambat 1140-09-03 i.e. 24 June 2020 (2077-3-10 B.S.) asking for information about the decision taken on the registration form but did not receive any response. On 7 March, 2021 (2077-11-23 B.S.), I went to the office to get information regarding the issue but the Registration Branch informed me that no decision has been made regarding this and I was sent back. In my application file, I found a letter from the legal advisor of Tribhuvan University. The letter stated that, this University could only approve my registration form if my class 10 certificates were amended. In this way, the rejection of my registration form and refraining to provide the registration number has hampered my under-graduation study. Since there is no point of going to college and taking exams without T.U. registration number and acceptance of registration form I have been compelled to drop out from my undergraduate studies.

5.5 As I was interested in linguistics, I decided to learn a language until the issue of higher education was resolved and went to join Campus of International Languages, Pradarshani Marga, Kathmandu on 7 January, 2020 (2076-09-22 B.S.). In addition to discussing the paperwork and procedures required for enrollment with the staff, I explained to them the personal reasons for not having the same name and personal details in my educational and



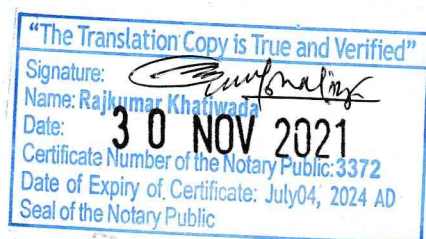


citizenship certificates. The staff informed verbally that they could not admit me to the campus on the basis of such documents. They told me that they could admit me based on the certificate of class 10 and I would be addressed by the name and gender as per that certificate. So, in order to study the language in the campus, I had to identify myself with an identity which was different from my actual identity. Therefore, I returned without submitting the form.

5.6 On one hand the advocacy at Tribhuvan University was ongoing while on the other hand I was trying to amend my educational certificated including my SLC certificate and higher education certificates along with my mark sheets with my actual gender identity. For this I filed an application with the National Examination Board on Nepal Sambat 1139-07-09 i.e.13 May, 2019(2076-01-30 B.S.). On the same day I paid Rs 200/- (Rupees Two Hundred) voucher no. 295988. I went to the Board's office for months to get an update and action taken upon my application. After around 7 months I received a letter from the Board dispatch no. 954, date 24 December, 2019 (2076-09-08 B.S.) which stated that my name could not be amended, the content of the letter is mentioned below:

".....The Chairman of the Board has directed to submit the class 10 file to the Office of the Controller of Examination, on the application filed on May 13, 2019 (2076-01-30 B.S.) to get your name and gender corrected, and received a letter dated May 17, 2019 (2076-02-03 B.S.) with dispatch number 1137 from the said office mentioning that the necessary decision should be made by the Board, when the subject was presented in the board meeting on September 5, 2019 (2076-05-19 B.S.), it was found that your name was mentioned as in the records of class 10 of the Office of the Controller of Examination, therefore requested that your name can not be corrected as per your request."

Finally, I sent a letter to the Chairman of the Board by attaching the original copy of the Entrance Examination Certificate and the Certificate of Merit along with the receipt of the fee I paid for the correction of certificates (receipt no. 295988) by post with the ticket

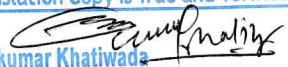


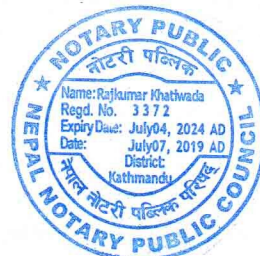


number RD773067121NP on Nepal Sambat 1141-04-07 i.e. 24 January, 2021 (2077-10-11 B.S.), to review his decision. While inquiring from the telephone, I came to know that the letter was registered on 28 January, 2021 (2077-10-15 B.S.) and the registration number is 634. I did not receive any reply to that request.

5.7 Now my educational future is in doubt. The certificate is not amended, nor can it be continued in higher education without amendment. Not only that, I am bound to be deprived of any service facility and educational and training programs required to submit SLC certificates. There is a situation of being denied admission in the Campus of International Languages due to non-amendment of my SLC certificates. Even in the process of understanding in order to be enrolled for Sanskrit language (Prakashastri) class offered by Sanskrit University, Pali language training provided by Buddhist Pariyatti Education Association, and training and educational programs provided by CTEVT, SLC certificates have to be submitted, so despite the desire to enroll in those programs have not gone anywhere for the enrollment, and this terror has arisen because I have had to face hurdles in different places for four years as my certificate and identity card are not according to my real identity.

5.8 I submitted an application to the Private Secretariat of the Hon'ble Minister of Education, Science and Technology on Nepal Sambat 1138-10-02, i.e. 13 August, 2018 (2075-04-28 B.S.) to solve the above mentioned problem. The registration number of the application is 39 of the said date. After no action was taken on the petition from the said private secretariat, I submitted two petitions under registration number 193 and 194 in the year Nepal Sambat 1139-04-02, i.e., 7 February, 2019. (2075-10-24 B.S.). After filing these petitions, it seems that the higher education branch of the said ministry under dispatch No. 676, 3 April, 2019 (2075-12-20 B.S.) sent a letter to all the universities of Nepal and through dispatch No. 710, dated 17 April, 2019 (2076-01-04 B.S.) sent a letter to Tribhuvan University annexing my letter and documents to take necessary steps in the matter mentioned in my petition. First of all, when my documents were sent to all the universities, my privacy was not taken into

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consideration. As the Ministry of Education is the concerned body, I submitted my documents but my privacy was not respected when sending my documents to all the unrelated universities. According to the letter of the Ministry, I have not received any information from any of the mentioned universities including Tribhuvan University about the action taken to address the issue. Similarly, the office of the Vice Chancellor of Tribhuvan University, citing the letter mentioned by the Ministry, dispatch No. 431 / 075-076, dated 23 April, 2019 (2075-01-10 B.S.) seems to have written to the Office of the Controller of Examination. In the letter, what is the relation between the application of the transgender woman and the problem of registration? It is mentioned that the Ministry of Education, Science and Technology and also the office of the Vice Chancellor should be informed about what can be done. But no office, including the office of the Vice-Chancellor, has given me any information about the letter, what action has been taken by the Office of the Controller of Examination on my problem or what information has been given to the Ministry and the Vice-Chancellor's Office.

5.9 After that, I applied for the amendment of birth registration in Lalitpur Metropolitan ward no 16 on the day of Nepal Sambat 1139-06-29 i.e. 2 May, 2019 (2076-01-19 B.S.) with registration number 918. On that day, the ward office verbally informed me that there was no evidence that I was transgender and that I needed a doctor's certificate. I then went on to point out some of the Supreme Court rulings on the subject that gender identity has the right to self-identification and that it cannot be determined by other individuals, societies, states and laws and that no physician can measure a person's sexual experience. After the ward office got confused, the ward office sent a letter to Office of Lalitpur Metropolitan City Registration branch on 10 May, 2019 (2076-01-27 B.S.) corresponded through dispatch no. 1071/075/76 asking what action to take on my request and demanded clear instructions. The ward office also stated in the letter that "I have not provided any evidence that I am a transgender woman." The Registration branch of the Municipality wrote a letter to the National Identity Card and Registration Department on 16 May, 2019 (2076-02-02 B.S.) through dispatch no. 7362/075/76, seeking directions. After that, the Department of National





Identity Card and Registration issued instructions to Office of Lalitpur Metropolitan City on 22 May, 2016(2073-02-09 B.S.) through dispatch No. 572/075/76. On the basis of the said instruction, on 24 May, 2019 (2076-02-10 B.S.), the Chief Administrative Officer of the corporation decided and wrote to the ward office on 26 May, 2019 (2076-02-12 B.S.) through dispatch No. 7602/075/076 and on the basis of that correspondence, a revised copy of the birth certificate has been provided on 2 June, 2019 (2076-02-19 B.S.). But in this revised copy I was able to correct my name only by mentioning "Rukshana Kapali". Since my gender detail were mentioned as 'other' in my citizenship certificate, I was not able to mention "female" according to my actual gender identity. Therefore, I corresponded with the local registrar of Office of Lalitpur Metropolitan City on Nepal Sambat 1171-04-07 i.e. 24 January, 2021 (2077-10-11 B.S.) to correct the gender details in the birth registration certificate by attaching the original copy of the birth registration by post with the stamp number RD773067285NP. While inquiring from the telephone, I came to know that the letter was registered on 26 January, 2021 (2077-10-13 B.S.) and the registration number is 10146. There is no any information that further action has been taken on this matter.

- 5.10 In my petition filed on Nepal Sambat 1139-06-29 i.e. 2 May, 2019 (2076-01-19 B.S.) to amend the birth registration, I had requested to address me with the word gender neutral. The reason for this is, the "humanity" denoting word is not used for me because my citizenship certificate mentions "other". I remember that in my citizenship certificate form, the concerned officer had mentioned 'other' after cutting off the son / daughter, 'other' after cutting off the grandson / granddaughter. Because of the mention of 'other' in my citizenship certificate, in most government offices I have received comments such as 'Sir or Madam' when my real gender identity is female. Even though my gender identity is female, I have been forced to identify as 'other' because of my citizenship certificate. 'Other' is not even a synonym for son / daughter. When I have to be addressed like this again and again, I am insulted and my self-esteem is hurt. Since my previous birth registration had a sentence stating that the date of birth of the daughter of such and such a person named would be Such, and when I was revising the birth registration, I requested to use the gender neutral word





"offspring" to ensure to be addressed at least as one human being thinking as if it were to be written as "other" by cutting off the son / daughter. But now the format of birth registration certificate has changed, so it is not relevant for birth registration certificate but the fact that one's true gender identity is 'female' but has to be defined as something other than a man and a woman in the citizenship certificate has to be humiliated in every step of life.

5.11 Then I applied to amend the DLE certificate of class VIII in the Education Development and Coordination Unit, Lalitpur on 18 June, 2019 (2076-03-03 B.S.) with registration no. 1148. From there, I was asked to bring a recommendation with details explained by correcting the records in the school where I passed class 8. I applied to the Eden Garden Boarding Secondary School, where I passed the 8th grade, to correct their records and make a recommendation accordingly. I received the recommendation dated 18 June, 2019 (2076-03-03 B.S.) of dispatch no. 2076-019-03 and submitted it to the Education Development and Coordination Unit, Lalitpur. Then I got the revised class 8 DLE certificate. Even there I could only obtain in my name but the gender details were mentioned in the certificate as 'other'.

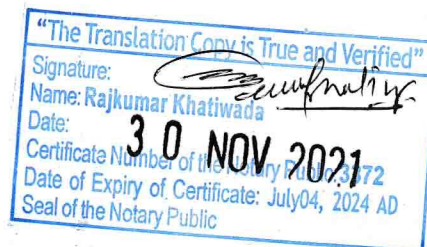
"This is to certify that Mr./Miss/Others Rukshana Kapali, son/daughter/others of Mr. has PASSED the annual examination of Class Eight in the year 2069 B.S. (2013 A.D.) According to the office record, he/she/others studied this grade in and the school record shows that he/she/others date of birth is"

5.12 Since the answers from all the mentioned offices showed that there was a problem in my citizenship, I tried to amend my citizenship. I made the recommendation of the ward office on 5 March, 2020 (2076-11-22 B.S.) and on the same date I applied to the District Administration Office (DAO) in Lalitpur to amend the gender details of the citizenship and maintain "female". DAO refused to accept my recommendation that day and I returned. In this regard, I sent a request to the Citizenship and National Identity Card Management Branch of the Ministry of Home Affairs to correct the gender details in the citizenship by





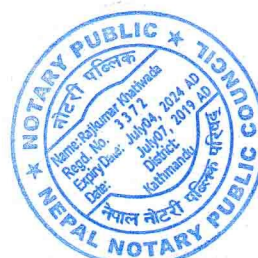
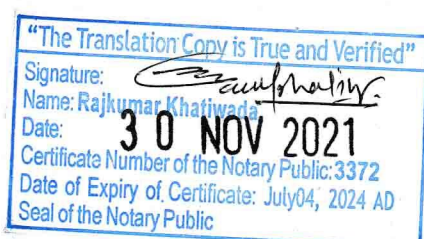
mentioning 'female' from 'other' by describing the related issue through postage with RD765381069NP stamp number on Nepal Sambat 1140-05-29 i.e. 16 March, 2020 (2076-12-03 B.S.) No hearing was held on the petition. I again wrote to the Chief District Officer, Lalitpur by post with the ticket number RD765802274NP on 24 June, 2020 (2077-03-10 B.S.) There was no response to the letter. I again wrote to the Chief District Officer on 13 July, 2020 (2077-03-20 B.S.) to get a written reply on whether the amendment I demanded could be made or not. There was no reply to the letter. I again addressed the Information Officer of Lalitpur, DAO on 10 September, 2020 (2077-05-25 B.S.), by post with ticket number RD770762768NP, asking for some information regarding the correspondence I had done in the past. The petition was not answered. I complained about this through the citizen app expecting that something will happen. On 4 February, 2021 (2077-10-22 B.S.), I received a call from the Ministry of Home Affairs and the caller suggested me to talk to the Chief District Officer and he himself would contact the officer and inform me that I would come. On 5 February, 2021 (2077-10-23 B.S.), I met with the Chief District Officer. He talked about getting citizenship as per my demand and called Room No. 18. However, from Room No. 18, it was said that it should be sent to the Ministry of Home Affairs and the decision would be taken by the Council of Ministers. Then again, through the ward office, I was asked to bring a recommendation stating that my citizenship certificate had the word "other" written on it and that it should be mentioned as "female". I went to the ward office on the same day. I received a recommendation with dispatch no. 957. Along with the recommendation, dated 5 March, 2020 (2076-11-22 B.S.), photocopy of the citizenship certificate and the photocopy of the passport mentioning the 'female' gender details, I addressed the Chief District Officer and wrote an open application for the amendment of citizenship. As the Chief District Officer had left that day, the Assistant Chief District Officer kept my petitions and requested me to come on Monday. When I went to the District Administration Office on Monday 8 February, 2021 (2077-10-26 B.S.) to understand the matter, I was told that my application should be sent to the Ministry of Home Affairs. The Chief District Officer's room was very crowded that day and half a day had passed and I left my phone number to finish other work. That evening I received a phone call from DAO saying that the recommendation received from the ward





office on 6 March, 2021 (2076-11-22 B.S.) was not valid as it was from the previous fiscal year and asked to bring the same type of recommendation from the ward office again. Accordingly, I received the recommendation from the ward office again on 9 February, 2021 (2077-10-27 B.S.) and sent it to the District Administration Office. It was reported that the recommendation reached DAO on 10 February, 2021 (2077-10-28 B.S.).

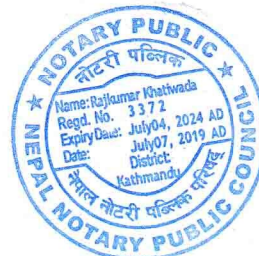
5.13 I have two passports. The first was issued on 16 January, 2017. In the passport I got my gender description 'F' (female). I have had the opportunity to attend many international conferences and travel abroad frequently. After my passport sheets expired, I applied for a new passport. But at that time, as my citizenship mentioned 'other', people filing the form started making counter-questions saying that I should not apply for 'female'. I was in a hurry to get a visa to attend a conference in Canada. On 20 September, 2018, another passport was issued in which the gender details 'O' (Other) was stated. The other mentioned passport has become risky in my international travels since I had to travel. For mentioning other, I have been denied visa of different countries. As easy as it was to travel with a female mentioned passport, other mentioned passports created various obstacles in the journey. First of all, other mentioned passports are not readable at Tribhuvan International Airport. I have had to experience unnecessary interrogation about my gender at the airport. Because I do not have a readable passport I am kept out of line and asked to fill out another handwritten form. In countries I have visited, there are no other citizenship readable like this. In some countries, when I am asked what I like between 'M' and 'F' and I answer 'F', then Immigration Desk moves on. In some countries, there are experiences such as interrogation, standing for hours, and entering only with the approval of their authorities. Transits have a similar experience. In some countries, such issues are criminalized. When traveling through such countries, you should always go through a scary mood. There are also many problems with getting a visa in the other mentioned passports and the embassy contacts frequently. While going to give biometrics for visa application, there was a problem with other mentioned passports. Finally, I applied for another passport on 23 February, 2020 (2076-11-11 B.S.). In that application I mentioned the details of my old passport as well as the details of my first passport (female





mentioned passport) and the 'F' gender details in the application. But the application form returned back. Finally, asking for the cancellation of my other mentioned passport, I addressed the Director General on Nepal Sambat 1141-02-29 i.e. 17 December, 2020 (2077-09-02 B.S.) and sent an application to the Passport Department via email. After receiving no reply to the email, I printed the same letter and wrote to the department by post with the stamp number ED772554666NP dated 28 December, 2020 (2077-09-13 B.S.). On 4 February, 2021 (2077-10-22 B.S.), I personally went to the Passport Department at Kantipath to find out about this, going to room no. 1, I received a verbal reply stating that the details of the letter I had sent and that the postal domestic tracking had delivered the letter to the department on December 31 (Poush 16), had received a request of that nature but the letter had not been registered. On the same day, when I went to talk to the director, he told me that there was nothing he could do.

5.14 Even when I applied for the voter ID card, I could not mention 'female' because 'other' was mentioned in my citizenship. So I had to submit the form for voter ID by mentioning 'other'. But when I received the voter ID card, it said 'third gender'. I did not fill in the form mentioning with such gender details. Such an identity card impressed me a lot to cast my vote in the 2074 election. Moreover, the Election Commission had made available the details of all the voter identity cards online. This act violated a person's right to personal privacy. Finally, I sent an application to the Election Commission via email on Nepal Sambat 1141-02-29 i.e. 17 December, 2020 (2077-09-02 B.S.) addressing the Secretary to cancel the voter ID card for the time being. But when no reply was received, I printed the same application and pasted the original copy of the voter identity card and wrote to the Commission by post with RD77255446NP ticket number on 28 December, 2020 (2077-09-13 B.S.). But so far I have not received any reply from the commission. While inquiring from the telephone, I came to know that the letter was registered on 4 January, 2021 (2077-09-20 B.S.) and the registration number is 629. After receiving the news that the Election Commission has brought a protest program in the voter list for the mid-term elections, I went to the ward office on 4 February, 2021 (2077-09-22 B.S.) to inquire, but as the deadline had expired, I





was requested to go to the Metropolitan office. When I went to the Metropolitan office, the deadline had expired too and I was told to contact the District Election Office. On the same day, while visiting the District Election Office, could not meet the concerned officials. Finally, on Nepal Sambat 1121-04-22 i.e. 8 February, 2021 (2077-10-26 B.S.), I wrote a letter to the Chief of the District Election Office regarding the gender details in the voter ID card. The letter provided me with the gender details of the voter ID card were not according to my citizenship nor according to my own gender identity, self-esteem is harmed when a voter's identity card is mentioned against the identity, referring to the practice of identifying myself as a 'female', I requested that the process of correcting the gender of the gender in my voter ID card be referred to as "female".

5.15 I received my permanent account number from the Inland Revenue Department Bhaktapur on 2 July, 2020 A.D. I had mentioned 'female' in the application form.

5.16 By letter with ticket number RD773067237NP on Nepal Sambat 1141-04-07 i.e. 24 January, 2021 (2077-10-11 B.S.), I sent the original copy of the character certificate to Eden Garden Residential Secondary School having S. No 03/072/015 to correct the name and gender details in my class 10 character certificate. I had attached a copy of the photo along with the letter to issue a copy of the character certificate and also requested to inform if there is any charge for that. According to the post office, the letter reached the concerned school the next day. But I have not received information regarding the matter.

5.17 My first passport was issued on 16 January, 2017 which mentioned 'female'; I have been using this passport as my main identity card as the passport is still valid even if the pages in the passport is finished. I have been using this passport which mentions 'female' to attain other service facilities as well. To get my e-services, digital payment methods like wallets and SIM cards, I have been using this passport with 'female' in places where I do not have to show my citizenship as much as possible. This passport has helped me work confidently with my identity. But there are few places where you cannot get services using your

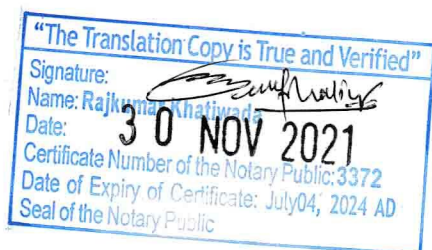




passport. In the field of education, educational certificates and in most other places, citizenship certificates have to be used, so there are problems everywhere.

5.18 In this case, I lodged a complaint at the Bagmati Provincial Office of the National Human Rights Commission with registration number 143 on Nepal Sambat 1140-10-23 i.e. 13 August, 2020 (2077-04-29 B.S.) to investigate the above written human rights and civil rights violations and make recommendations to the concerned bodies to protect my fundamental right to education, right to gender identity and other human rights. However, no action has been taken on the complaint and the violators responsible for violating rights have not been held accountable.

5.19 I disclosed the same transactions and acted under my authority, and for my justice, I wrote an email on Nepal Sambat 1140-11-29 i.e. 16 September, 2020 (2077-05-31 B.S.) to Office of the Chief Minister and Council of Ministers of Bagmati Province, Education and Health Committee of the House of Representatives, Women and Social Committee of the House of Representatives, State Management and Good Governance Committee of the House of Representatives, National Affairs and Coordination Committee of the National Assembly, and National Assembly Along with the Evaluation Committee, also, I wrote an email to the Office of the Prime Minister and Council of Ministers on Nepal Sambat 1140-10-23 i.e. 19 August, 2020 (2077-05-3 B.S.), to the National Commission for Women on, Nepal Sambat 1140-10-30 i.e. 13 August, 2020 (2077-04-29 B.S.). But none of these offices, except for the Women and Social Affairs Committee of the House of Representatives, informed me of the receipt of my petition. The Women and Social Affairs Committee of the House of Representatives verbally over the phone assured me that they had received my request and would take the necessary action after studying it. Apart from that, no other action was taken. In other offices, I have repeatedly done follow-up work via email and asked whether my application has been registered or not and requested to provide registration date and number if done. But no answer came from anywhere.





6. In addition to the problems mentioned above, I have faced the following types of abuse, violence and violations of human rights and fundamental rights as provided by the constitution.

6.1 Obligation to carry identity card and certificates against true identity: The Constitution of Nepal has guaranteed the right to health. Psycho-emotional wellbeing and social wellbeing are also an integral part of health. Having been forced to use identity cards against my true identity and to live my life using a fake identity has forced me to live a terrifying life each day. The Constitution under article 16 also guarantees the right to live with dignity. The Universal Declaration of Human Rights also enlists the same under Article 1. Accordingly, as per the precedent set by the Supreme Court, decision no. 9875, N.K.P. 2074, volume 9, "Living with an identity card other than one's true identity hurts one's self esteem and weakens one's sense of community" and I have been deprived of living a dignified life when I am forced to identify my gender against my true identity in the identity card.

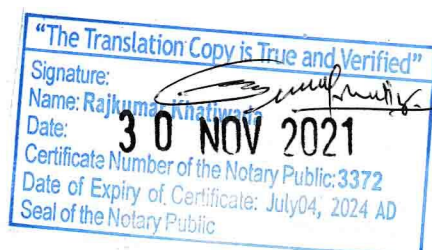
6.2 Seeking Medical Recommendation: Some Opponents have verbally asked me for medical recommendation. As mentioned under paragraph 4.9, the ward office has also mentioned in its correspondence that "I have not submitted any evidence of being a transgender woman". There is no provision under any prevailing laws that any kind of medical proof has to be submitted to attain or amend the name or gender details in the citizenship. In this relation, in case of Anik Rana (Mandamus N.K.P. 2074, volume 9, decision no. 9975), the honorable Supreme Court has set out the legal principle that "achieving gender identity according to one's self experience is a matter of one's very personal right to self-identification. It won't be relevant for other people, society, state or law to determine what sex is. Any provision that harms human freedom, dignity, and self-respect cannot be accepted from the point of view of human rights". Similarly, Declaration on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity A/HRC/RES/32/2 passed by the United Nations on June 30, 2016 mentions gender identity as a subject of self-identification. Eliminating Forced, Coercive, and Otherwise Involuntary Sterilization - An Interagency Statement issued by seven UN bodies defines this type of medical examination as coercive





involuntary medical interventions and an abuse of human rights. Similarly, many documents published by the World Health Organization state that the subject of "gender identity" cannot be determined and verified by a medical system or physical examination. I have a right over my body. It is up to me to decide whether to perform any kind of physical transplant, procedure or surgery and the subject of whether I did it or not is a matter of my right to privacy. Forcing me to undergo medical surgery in order to obtain or maintain identity cards according to my gender identity is a violation of my constitutional right to freedom of choice (to make decisions on my own body) and health rights (to be forced to undergo involuntary surgery). Article 17 of the Constitution of Nepal states that no person shall be deprived of personal liberty except in accordance with the law. In case of Suman Pant and others N.K.P. 2074, volume 12, decision no. 9921 the Supreme Court has defined that "there is a right to self-identification for how one conducts one's personal life, what one's gender identity is and what cry of the soul one hears".

Some transgender people may resort to various medical procedures to change their bodies. These various procedures are called gender affirming health service. But these procedures are not a one-time medical procedure. It involves more than a dozen of procedures including variety of surgeries including use of hormones. Some of these methods may not even end in one's life time. Some surgeries may even fail and need to be repeated. Some surgeries may even be life threatening to a person. Not all people's body is the same. People who are weak physically, with serious illness, or with long term illness and many with different health concerns are not able to perform such procedures. Some of these surgeries are not available in Nepal. Also, such procedures are economically very expensive. A single operation may cost up to millions of rupees. In a country like Nepal where income is very low and most of the people are unemployed, while transgender people are still deprived of education and employment such surgery is unaffordable. It is a violation of the bodily integrity and autonomy and human rights of transgender people either to create a binding condition where transgender people must undergo such medical procedures in order to be identified in their own gender or to prohibit such procedure their transgender people.



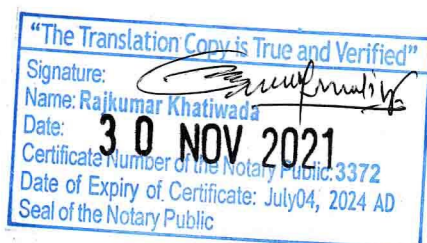


6.3 Violation of Privacy: Article 28 of the Constitution of Nepal guarantees the right to privacy to any person concerning life, residence, property, writings, facts, correspondence, and character. Section 3 of the The Privacy Act, 2018 ensures the privacy of the individual's body and personal life and section 11 ensures the privacy of the document. The name and gender details assigned to me at birth are considered as dead when I establish or attempt to establish an identity based on my actual gender identity. We call such names and gender as dead names and dead gender. To address a person by their dead name and gender is to deny their very existence and to deny them the identity they want to establish. In the process to establish my identity, my right to privacy has been violated due to disclosure of my dead name and dead gender. My personal gender history also has not been kept confidential as all my personal identity cards and certificates have not been maintained according to my gender identity.

6.3.1 Right to be forgotten: The right to be forgotten or the right to erasure, which falls under the right to privacy, is essential for transgender people like me and me to establish their individuality according to their identity. Therefore, once a person's individuality is established according to their actual identity, the opposite dead name and gender does not become relevant. When such details remain in the archives, there is a risk that one's privacy will be breached after death. In today's digital age, such privacy breaches are even more sensitive.

A decision of the Court of Justice of the European Union concerning right to be forgotten, Case C-131/12, Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González:

"The Court observes in this regard that even initially lawful processing of accurate data may, in the course of time, become incompatible with the directive where, having regard to all the circumstances of the case, the data appear to be inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which

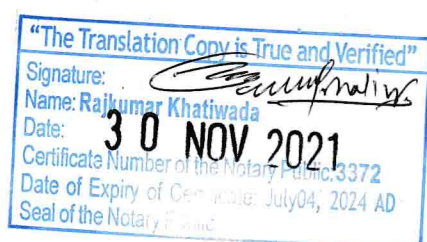




they were processed and in the light of the time that has elapsed. The Court adds that, when appraising such a request made by the data subject in order to oppose the processing carried out by the operator of a search engine, it should in particular be examined whether the data subject has a right that the information in question relating to him personally should, at this point in time, no longer be linked to his name by a list of results that is displayed following a search made on the basis of his name. If that is the case, the links to web pages containing that information must be removed from that list of results, unless there are particular reasons, such as the role played by the data subject in public life, justifying a preponderant interest of the public in having access to the information when such a search is made."

European Union's General Data Protection Regulation (GDPR) Art. 17 Right to erasure ('right to be forgotten') also ensures right to be forgotten. According to this law, if the data is no longer required for the purpose of data collection, if the person subject to the data withdraws the consent, if the person subject to the data objects to its use and processing after the data has been collected, if the data is collected illegally or if personal data becomes public then there is a right to delete such personal data.

6.4 Misgendering: Misgendering is the act of adversely addressing any person especially transgender person and people with different gender identities with different words rather than the ones which they use or have requested to use which does not correctly reflect the gender. This is an abusive act. Even though the Constitution of Nepal prohibits such acts, transgender people like me are still facing the gender stigma in the society. Because "others" is mentioned in my citizenship, in various governmental and non-governmental organization, I have to hear comments like "we cannot address you as "sir" or "madam" "what do we call you, we cannot say both". When I ask to be identified as a woman and be addressed accordingly I am not respected.





This problem is also being addressed by the Language Commission in paragraph 7, section 7.6 of the Annual Report (III) 2075 noting that the language is being used in a way that adversely affects the respect of sexual and gender minority people as well as their dignity at home, family, society and national environment and does not ensure legal protection for the use of words, phrases and sentences in speech, writing or symbolic form, to maintain their dignity, their recommendation is: " In the context where there is a guarantee of right to live a dignified life provided under article 16, under part 3 fundamental rights and duties of the Constitution of Nepal, it is important to use language to ensure respect for sexual and gender minority people and to take initiatives in awareness work by building a social base at local, state and federal levels."

In this context *New York City Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23)* mentions the following:

1. *Failing To Use the Name or Pronouns with Which a Person Self-Identifies*

The NYCHRL requires employers and covered entities to use the name, pronouns, and title (e.g., Ms./Mrs./Mx.)¹⁵ with which a person self-identifies, regardless of the person's sex assigned at birth, anatomy, gender, medical history, appearance, or the sex indicated on the person's identification.

Most people and many transgender people use female or male pronouns and titles. Some transgender, non-binary, and gender non-conforming people use pronouns other than he/him/his or she/her/hers, such as they/them/theirs or ze/hir.¹⁶ They/them/theirs can be used to identify or refer to a single person (e.g., "Joan is going to the store, and they want to know when to leave"). Many transgender, non-binary, and gender non-conforming people use a different name than the one they were assigned at birth.

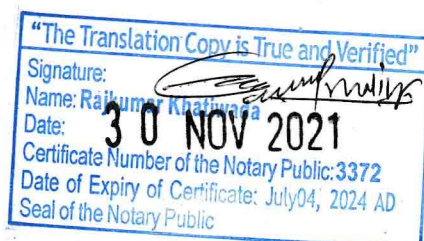




All people including employees, tenants, customers, and participants in programs, have the right to use and have others use their name and pronouns regardless of whether they have identification in that name or have obtained a court-ordered name change, except in very limited circumstances where certain federal, state, or local laws require otherwise (e.g., for purposes of employment eligibility verification with the federal government). Asking someone in good-faith for their name and gender pronouns is not a violation of the NYCHRL.

Covered entities may avoid violations of the NYCHRL by creating a policy of asking everyone what their gender pronouns are so that no person is singled out for such questions and by updating their systems, intake forms, or other questionnaires to allow all people to self-identify their name and gender. Covered entities should not limit the options for identification to male and female only.

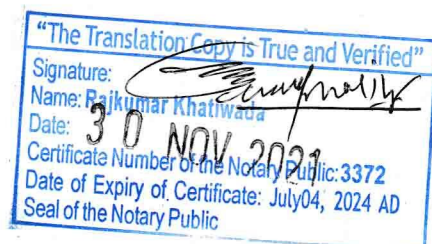
6.5 Misinterpretation of my Identity: Introducing myself as per my true gender identity is not something that I have "changed gender" or "changed from a man to a woman." I was never a man. I have always known myself as a girl /woman. The difference is that in the past, I was forced to live according to the gender that was assigned to me upon the basis of sex according to the social norms, but now I have freed myself from those social bonds and am living according to my self-identified gender identity. Starting to live in my true identity is a shift towards my true gender identity. That doesn't mean I used to be one and have changed into another. I am open to the identity of who I am and I call on the social world to recognize me in my true identity from now on. I have never felt like a man. Not only that, I lived according to my identity at a young age and therefore I was known as 'girl' at that age and 'woman' now as an adult. I have become a woman from a girl. Interpretations such as "I changed my gender" or "I became a female from male" are also derogatory and discriminatory. Such an interpretation is a product of centering to cisgender people's experiences, perceptions and realities and of alienating and excluding the experiences,





perceptions, realities of transgender people. I only have the right to explain how I have experienced my gender.

6.6 Abuse and Insensitive Behavior: I have been subjected to various forms of abuse and insensitive treatment in any government body, especially in the situation where I have to submit an identity card and certificate contrary to my identity and in the circumstances as mentioned in paragraph 4 of this writ. There are documentary evidences of the events I have discussed in paragraph 4, but there can be no evidence of the practical, emotional and character abuse and insensitive behavior we have been experiencing. I would like to mention some of the abuses and insensitive behaviors I have experienced during the many events discussed in paragraph 4. Some abuses are subtle, such as facial expressions, gestures or signs. In some government offices, services have to be taken from the window. In such context, other people in line or around are listening to the case which is being explained from outside the window. I have to explain such personal matter to other people besides the concerned officer and feel insecure because of their reaction. Even when requested to talk only to concerned officials subject matter being sensitive and confidential such environment at some offices are never facilitated and I feel that there is insensitivity towards privacy. Most of the time while talking about this issue, people of the concerned office and the service recipients have to experience humiliating experiences like people staring from bottom to top, changing expression, coming around and making a crowd. Especially when I have to show documents mentioning my dead name, they mention the same in loud voice saying "oh so your name was this". When I tell them that my name is Rukshana and address me by the same as I have come to amend these documents, I have been victim to many insensitive behaviors such as addressing me with my dead name by letting people around hear it and also tell other employees "she was this before and this now". The use of postal service to deal with the various mentioned abuses as mentioned above in the past 4 years going to various government and other offices to amend my certificates according to my gender identity. I have been corresponding mainly with the post office as I have to avoid those experiences while corresponding with the post office. The state bodies force me to feel insecure. Going to





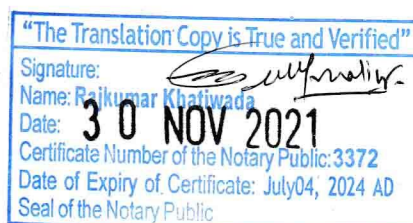
a government body is an emotional trauma and humiliating experience for me. After all these experiences of the past 4 years, I do not consider government agencies a safe place. For me, these experiences have also caused emotional pain and it has adversely affected my mental health.

6.7 Dead naming: Once a person's gender identity has been established or is intended to be established, the gender and name assigned at birth is considered dead. Dead naming someone is to deny their existence, including their gender identity. Some correspondences and writings from the opposition even have dead named me in this way.

7. The honorable Supreme Court has set precedent in the decisions of some writ petitions regarding gender identity.

7.1 Blue Diamond Society (N.K.P. 2065, volume 4, decision no 7958)

- Even if a child is born with one gender through biological and natural process, it may develop into a different gender other than the one born and changed different gender to be born in. Such change does not mean that they are not humans or citizens.
- No provision that harms human freedom, dignity and self-respect can be accepted from the point of view of human rights. The basic rights of the individual should not be curtailed on any basis like religion, culture, tradition, values.
- As per section 9 of the Nepal Treaty Act 1990, ICCPR and ICESCR is also considered as Nepali law, LGBT's should have the right to have one's own identity and shall have the right to use the rights as provided under the Nepali law without any discrimination.
- We must gradually assimilate the international practices of the exercising the rights of the individual, the changing world society and the practice of respecting the rights of minorities. If the rights of such individuals are legally ignored on the basis of the perception that perversion will spread in the society, then our commitment to human rights will be questioned at the international level.

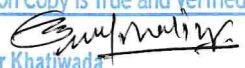




- Medical science has already proven that this is not a psychiatric problem but a natural behavior. Now it is not possible to remain in the status quo of rejecting the conclusion provided by medical science. No provision that harms human freedom, dignity and self-respect can be accepted from the point of view of human rights. The basic rights of the individual should not be curtailed on any basis like religion, culture, tradition and values.

7.2 Aanik Rana and others case (Mandamus N.K.P. 2074, volume 9, decision no 9875)

- "It is a fundamental human right for a person to be able to live with self-respect and identity. In such situation, it would be a human right and a constitutional right for people with different gender identities and sexual orientations to live with self-respect with their independent identities".
- "Achieving gender identity according to one's self experience is a matter of one's very own right to personal self-identification. It is not relevant for other people, society or law to determine what biological sex is. Any provision that is against human freedom, dignity and self-respect cannot be accepted even from the point of view of human rights".
- "Gender minority communities have to live with a different identity than their real identity which hurts their self-esteem and weakens their community's identity. Forcing them to live a frightening and invisible life by hiding their identities in a way that is different from their own is a violation of the human rights of such sexual minorities".
- "In some cases one can only know and express one's gender identity later, so the right to amend one's citizenship certificate based on one's physical and biological organs should be legally protected".
- "A person is born biologically regardless of their gender, but their true identity is the identity they experience personally."

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- "Gender identity means the innermost feelings of each person and the personal experience of gender that is different from the biological gender of the birth or the other sexual experience that is expressed through other clothes, speech and behavior".

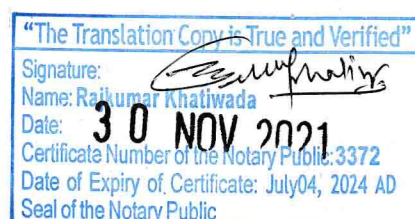
7.3 Case of Suma Pant and others v. Ministry of Home Affairs, Department of Immigration, Dilibazar, Kathmandu and others (N.K.P 2074, volume 12, decision no 9921)

- "The right to self-identification depends on how one conducts one's personal life, what one's gender identity is and what the call of the soul is".

Although the subject matter of these writ petitions or the writ petitioners are not transgender persons, the interpretation of "gender identity" has also been analyzed. In essence, gender identity has many forms, and the right to determine gender through self-realization is a person's right to self-identification is the main subject propounded by these decisions.

8. The following international law, in which Nepal is a party, states that the state has the responsibility to respect, protect and promote economic, social and cultural right of transgender people.

- a. It is the obligation of the Opponents to provide effective remedy to the victims of human right violation under the constitutional, legal and international law. Article 8 of the Universal Declaration of Human Rights 1948 and article 2 (3) of the Convention on Civil and Political Rights in particular provide the right to effective remedy to victims. The right to justice is an important right under the right to effective treatment. The treaty also imposes various obligations on the parties concerned in relation to the various measures and methods to be adopted by the state to ensure the right to effective treatment. This includes the responsibility to investigate and prosecute the perpetrators of human rights violation. The United Nations Human Rights Committee has the power to interpret the provision of the treaty. Whose explanatory comment no. 2 explains that "..... persons who have been victim of violation of

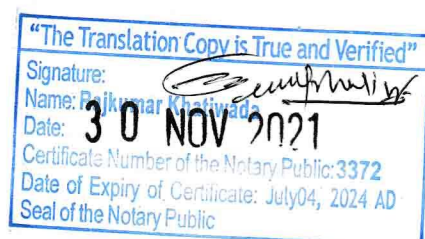




rights shall have the right to effective remedy and under that the perpetrators should be brought to justice and if found guilty such persons should be punished".

- b. Nepal has ratified more than a dozen of conventions including Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In all these conventions, the state has been entrusted with the responsibility of ending all forms of discrimination and protecting and promoting human rights. UDHR is a universal instrument for human rights and calls for human dignity, equality and liberty. Article 2, 7 and 23 of this Declaration provides right not to be equality on the basis of caste, race and gender, to be equal before the law and to be entitled to equal protection of the law without discrimination. General comment no. 31 on section 2 of ICCPR states that the state has to take responsibility to take legal and other measures to exercise the rights, investigate cases of human rights violations, to provide effective remedies against violations, to bring the perpetrators of certain violations to justice and to provide compensation to the victims. Similarly, chapter 2, article 2, of the ICESCR provides that there should be no discrimination on any grounds including caste, color, gender, language, religion, political or other faith, national or social origin, property, birth or other status. General Comment no 20. by the United Nations Committee on Economic, Social and Cultural Rights explaining the "other status" mentioned in this (E / C.12 / GC / 20, 2 July 2009) is explained as follows:

"Other status" as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace."





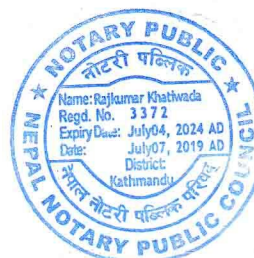
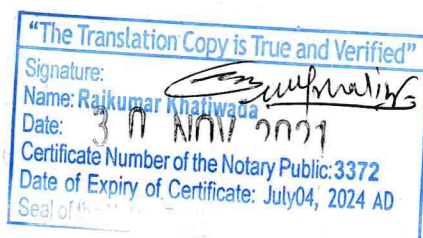
Similarly, in the aforesaid General Comment, the Committee, stating that it is the responsibility of the State to end discrimination on the grounds mentioned above, has commented on the steps to be taken by the member states of the Convention as follows:

“States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice. Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programs, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behavior in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance. Public leadership and programs to raise awareness about systemic discrimination and the adoption of strict measures against incitement to discrimination are often necessary. Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups. Given the persistent hostility towards some groups, particular attention will need to be given to ensuring that laws and policies are implemented by officials and others in practice.”

- c. The Independent Expert Report (A / 73/152) on “Sexual Orientation and Protection against Gender-Based Violence and Discrimination” presented to the General Assembly by the UN Secretariat on 12 July 2018 has made a number of recommendations to member states. The key recommendations are:

(Page 14) F. Recognition procedures :- In February 2017, on the basis of the legal obligation of non-discrimination, the recommendations by United Nations human rights mechanisms and a survey of international good practices, the United Nations High Commissioner for Human Rights recommended certain features for the process of recognition, with which the mandate holder concurs. Under those parameters, the process of recognition should:

- Be based on self-determination by the applicant
- Be a simple administrative process

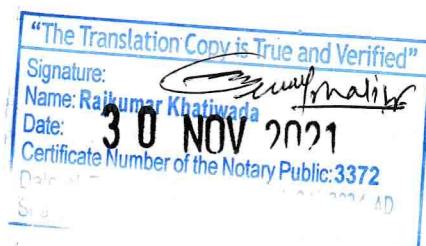




- Not require applicants to fulfill abusive requirements, such as medical certification, surgery, treatment, sterilization or divorce
- Acknowledge and recognize non-binary identities, such as gender identities that are neither “man” nor “woman”
- Ensure that minors have access to recognition of their gender identity

(Page 24) V. Recommendations: - 81. Furthermore, the Independent Expert urges States, through all appropriate and relevant means at its disposal, to:

- (b) Eliminate abusive requirements as prerequisites for change of name, legal sex or gender, including forced, coerced or otherwise involuntary sterilization; medical procedures related to transition, including surgeries and hormonal therapies; undergoing medical diagnosis, psychological appraisals or other medical or psychosocial procedures or treatment; requirements relating to economic status; health; marital, family or parental status; and any third-party opinion. This should extend to ensuring that a person’s criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender;
- (d) Enact gender recognition systems concerning the rights of trans persons to change their name and gender markers on identification documents. The procedure involved should ensure due respect for free and informed choice and bodily autonomy. In particular, taking into account identified best practices, the processes should:
- (i) Be based on self-determination by the applicant;
 - (ii) Be a simple administrative process;
 - (iii) Be confidential
 - (iv) Be based solely on the free and informed consent of the applicant without requirements such as medical and/or psychological or other certifications that could be unreasonable or pathologizing;





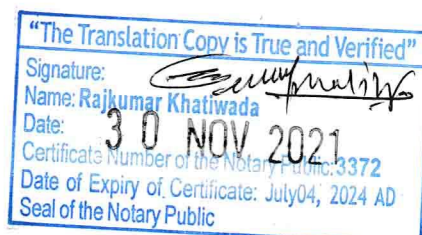
- (v) Acknowledge and recognize non-binary identities, such as gender identities that are neither “man” nor “woman” and offer a multiplicity of gender marker options;
 - (vi) Be accessible and, to the extent possible, cost-free;
 - (e) Examine seemingly neutral requirements that are prerequisites for change of name, legal sex or gender for potential or actual disproportionate effects in the light of the realities of the trans populations in each given context.
- d. The Yogyakarta Principles +10 develops the following principles regarding marginalized sexual orientation, gender identity and the problems that individuals with sexual characteristics need to minimize, their rights and the role of the state:

Principle 31 : The Right to Legal Recognition

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.

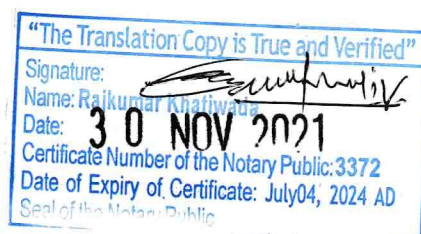
STATES SHALL

- A. Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licences, and as part of their legal personality;






- B. Ensure access to a quick, transparent and accessible mechanism to change names, including to gender-neutral names, based on the self-determination of the person;
- C. While sex or gender continues to be registered:
- Ensure a quick, transparent, and accessible mechanism that legally recognizes and affirms each person's self-defined gender identity;
 - Make available a multiplicity of gender marker options;
 - Ensure that no eligibility criteria, such as medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion, shall be a prerequisite to change one's name, legal sex or gender;
 - Ensure that a person's criminal record, immigration status or other status is not used to prevent a change of name, legal sex or gender.
9. The issues mentioned in the present case depict the policy and structural problems I have faced due to being a transgender woman. It is the right of the petitioner to ensure that the state addresses such issues and provides the appropriate policies, laws and structures for the protection of the rights of victims and the people who enjoys the rights guaranteed by national and international law without any discrimination. Article 2 of the Universal Declaration of Human Rights provides right against discrimination, Article 7 and Article 2 (3) of the International Covenant on Civil and Political Rights provide for the right to effective remedy and Article 26 provides for the right to equality. Similarly, article 2 of the International Covenant on Economic, Social and Cultural Rights and article 2 (1) of the Convention on the Elimination of All Forms of Discrimination against Women provides protection under discrimination and article 26 provides right to equality. The provisions of these conventions protect and promote the human rights of the individual and end all forms of discrimination. According to the Nepal Treaty Act 1990, it is the obligation of the government of Nepal to abide by the mentioned international laws. Similarly, the fourth paragraph of the preamble of the Constitution of Nepal states "To build an egalitarian society on the basis of proportional, inclusive and participatory principles to ensure





economic equality, prosperity and social justice by ending class, ethnic, regional, linguistic, religious and gender discrimination and all forms of ethnic untouchability." Article 1 of recognizes the constitution as the supreme law of the land and provides that any law inconsistent to the constitution to be invalid. Article 10 states that no Nepali citizen shall be deprived of the right to obtain citizenship and that a single federal citizenship with provincial identity shall be provided in Nepal. Article 12 of the Constitution provides that a person who has acquired the citizenship of Nepal on the basis of descent can obtain a certificate of citizenship of Nepal with gender identity in the name of his / her mother or father. Similarly, article 16 guarantees the right to life with dignity, article 17 guarantees the right to freedom and article 18 guarantees the right to equality under the fundamental rights and duties of the constitution. Under right to equality, it is important that all citizens be equal before the law and that no one be deprived of equal protection of the law. In addition, sub-article (2) of article 18 applies that there will be no discrimination to the application of general law on the basis of origin, religion, caste, tribe, gender, physical condition, disability, health status, marital status, pregnancy, economic status, language or region, ideological belief or any other basis. Sub- article (3) mentions that state shall not discriminate between citizens on the basis of origin, religion, race, caste, tribe, gender, economic condition, language or geographical region, ideology or any such other basis and provision has been made to make special arrangements for the protection, empowerment or development of transgender people including socially and culturally backward women, Dalits, Adivasis, Adivasi Janajatis, Madeshis, Tharus, Muslims, oppressed classes, minorities, marginalized farmers, labours, youth, children, senior citizens, person with disabilities, pregnant women, helpless, backward and economically deprived Khas Aryan citizen. This constitutional right of certain castes and communities, including gender and sexual minorities, is a special right and there should be no discrimination in its practice. Similarly, article 28 of the Constitution guarantees the right to privacy, article 31 the right to education, article 33 the right to employment, article 35 the right to health, article 38 the right of women, article 39 the right of children and Article 42 the right to social justice. In addition, article 50 sub-article (1) provides provision of rule of law, fundamental rights ad values of human rights, gender equality, participation, social justice in all spheres of national life and sub-article (2) provides additional

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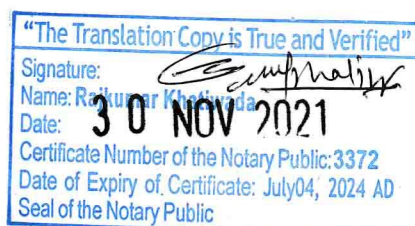




responsibility on the state to end all forms of discrimination, exploitation and injustice. In addition, article 126 provides that the right to justice in Nepal shall be exercised by the court in accordance to the Constitution, other laws and recognized principles of justice and that everyone should abide by the order or decision provided by the court.

10. Therefore, as mentioned in various paragraph above, the actions of the Opponents not only violate the rights provided by Articles 16, 18, 28, 31, 33, 35, 38, 39 and 42 of the Constitution of Nepal but has also violated the precedents set by the honorable court, hence, the following order be issued in the name of the Opponent in accordance with article 133 (2) and (3) of the Constitution of Nepal, section 8 (1) of Justice Administration Act 2016.

- a. The documents including the citizenship, educational certificates attached to the submitted application and the correspondence with the Opponent office mentions the name and gender details of the person contrary to my real gender identity. If these documents become public, privacy of my personal details will be violated, hence, an order of mandamus or other related order be issued to keep the citizenship, educational certificates, and the correspondences with the Opponent confidential and private and not to provide it to any person, organization, media other than the related person.
- b. Identity cards and certificates provided by some of the office of the Opponents mention my name and gender details that do not accurately represent my gender identity. I don't want to be identified by that name and gender. Being addressed by that name and gender hurts my self-esteem and causes emotional pain. Thus, an interim order be issued to address me with the name "Rukshana" as mentioned in the petition and not to use and address me with my dead name and the gender details in the hearing, pleading, and in the written reply to be submitted by the Opponent during the proceeding of this case. If such name is to be used, to use such name as "dead name" or "the name as mentioned in the educational certificate".
- c. Refusal to register my university registration form and providing a registration number is a violation of my fundamental right to attain education as provided under the Constitution.

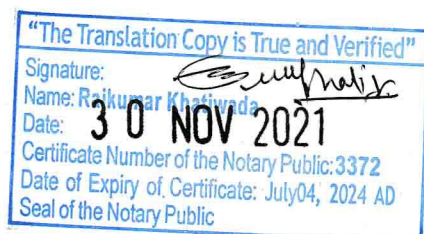




This has affected my study for the past 3 years. If there is no immediate judicial intervention on this matter, my future education will be irreparably hampered and for protection of my fundamental right to education an interim order be issued in the name of Office of the Controller of Examination, Tribhuvan University pursuant to rule 49 of Supreme Court Rules 2017 to immediately register the form with the name "Rukshana Kapali" and gender as "female" and to provide the registration number to the applicant by making an arrangement to continue her undergraduate study on the basis of the previous enrollment. Also, as the registration form could not be registered my higher education has been affected so a time limitation be fixed up till one month from the date of the issuance of order.

Additionally, for registration of form if through judicial interpretation there are any internal administrative and procedural policy, law or procedure, an order of mandamus be ordered in the name of Office of Prime minister and Council of Ministers, Ministry of Education, Tribhuvan University and its Vice Chancellor and Office of the Controller of Examination to immediately renew and amend such policy, law or procedure.

- d. According to my real gender identity (name and gender details), I will be deprived of service in any institution or body for which I am required to submit my educational certificate of class 10 or use the name and gender details mentioned in that educational certificate. So, pursuant to rule 49 of Supreme Court Rules 2017 an interim order be issued to ensure the right to use the name and gender identity according to one's gender identity i.e. name "Rukshana Kapali" and gender as "Female" without being compelled to use the name and gender details as mentioned in the certificate and not to deprive me of services from the institution or body from where the services will be rendered on submitting the certificates until the amendment of my class 10 educational certificate.
- e. The letter issued by the Opponent, National Examination Board, dispatch no. 954 on December 24, 2019 (2076-09-08 B.S.) and the decision dated September 5, 2019 (2076-05-19 B.S.) mentioned in the letter is illegal and contrary to the precedent set by the honorable





court. If my class 10 academic credentials are not amended, I will end up with irreparable damage to my academic future, be at high risk of obstacles and violence from identity credentials, and be forced to disclose those details even if I don't want to be identified. Also, since it has deprived me of establishing my gender identity and created problems for the enjoyment of my fundamental constitutional rights, both the decision and the letter be declared void through an order of certiorari. Also, an order of mandamus and appropriate order be issued in the name of the National Examination Board to amend the name and gender details mentioned in my class 10 educational certificates according to my actual gender identity by mentioning the gender identity "female" and the name "Rukshana Kapali". Also, as my education has been affected due to failure of amendment in the educational certificates on the basis of my real name and gender a time limitation be fixed up till one month from the date of the issuance of order.

Additionally, if there are any judicial interpretation, are any internal administrative and procedural policy, law or procedure concerning restriction on amendment of name and gender identity in educational certificates, an order of mandamus be ordered in the name of Office of Prime minister and Council of Ministers, Ministry of Education, Tribhuvan University and its Vice Chancellor and Office of the Controller of Examination to immediately renew and amend such policy, law or procedure.

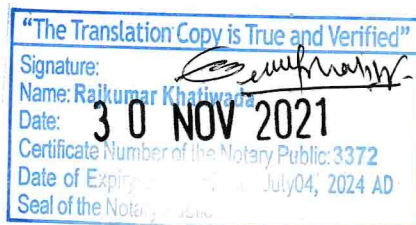
- f. Once I have established my gender identity, my former name and gender details are no longer relevant. An order of mandamus and relevant order be issued in the name of the Opponents with a time limit of one month to eliminate all the records, correspondences, application, documents mentioning my dead name and gender provided in the past for amendments and to guarantee my right to privacy and right to be forgotten.
- g. Once I have established an identity based on my gender identity, my name will be uniform and the name that accurately represents my gender identity will be maintained, then the recommendation that the two names are of the same person issued by the ward office becomes irrelevant. Therefore, an order of certiorari and other relevant orders be issued to





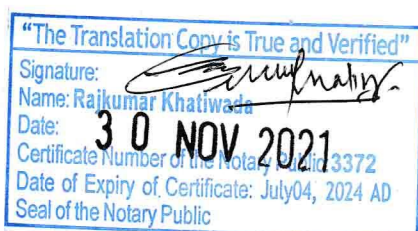
cancel the letter no. 63/072/073 and letter no. 457 issued on September 9, 2015 (2072-05-23 B.S.) and December 2, 2018 (2075-08-16 B.S.) respectively by the former Lalitpur sub-metropolitan ward no. 18 and presently Lalitpur Metropolitan City ward no 16 and to retain my only name "Rukshana Kapali".

- h. An order of mandamus and relevant order be issued in the name of the Opponents to maintain privacy and not to disclose any details concerning my dead name and dead gender to any person or media and to maintain confidentiality.
11. This writ petition has been filed in accordance to rule 73 of Supreme Court Rules 2017 as the issues raised in the present petition are related to urgent issues such as violation of fundamental rights and human rights including right to education of the Petitioner and degrading treatment on life, liberty, equality and dignity.
12. No complaint or petition has been filed in any court for taking parallel jurisdiction in this regard.
13. Currently, no legal practitioner has been appointed. Consider the arguments presented by the legal practitioner to be appointed as a part of this application.
14. Enclosed Documents:
- (a) My personal documentary evidence in order as mentioned in paragraph 5 and the correspondences I sent and received from the Opponent bodies.
 - (b) Transgender fact sheet published by the United Nations in English and its unofficial translation in Nepali-2
 - (c) The book "Sexual Orientation, Gender Identity and Sexuality: The Basic Concept" published by Queer Youth Group and Campaign for Change, ISBN 978-9937-0-8469-7
 - (d) As the following documents are relevant to the case it should be taken as evidence
 - 1) United Nations General Assembly: 12 July 2018, A/73/152: Report of the Independent Expert on protection against violence and discrimination based on sexual



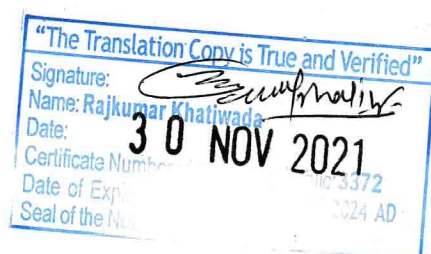


- orientation and gender identity A - 21, 22, 23, B - 25, C - 28, 29, 30, 31, 32, E - 36, 37, F- 39, 40, र 81: <https://undocs.org/A/73/152>
- 2) United Nations Human Rights Council: 12 February 2020, A/HRC/43/52: Report of the Special Rapporteur on the right to privacy अन्तर्गत 20 (d), 27 (c), र 6 - 35, 36 : <https://undocs.org/A/HRC/43/52>
- 3) UN Committee on Economic, Social and Cultural Rights - General Comment No.14 (2000) on the right to the highest attainable standard of health §8, <https://digitallibrary.un.org/record/425041>
- 4) General Comment No. 22 (2016) on the right to sexual and reproductive health: §58 <https://digitallibrary.un.org/record/832961>
- 5) UN Special Rapporteur on Torture, and other cruel, inhuman or degrading treatment or punishment, report 2016, 5 January 2016, A/HRC/31/57 - 49, 72 (e), (h). <https://undocs.org/pdf?symbol=en/A/HRC/31/57>
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Petitioner

s/d.....

Rukshana Kapali

Nepal Sambat 1141/06/13

March 31, 2021 (On the occasion of *International Transgender Day of Visibility*)

Dated: 2077-12-8, day 4.

